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**IN THE  
COURT OF APPEALS OF INDIANA**

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STATE OF INDIANA,

Appellant-Plaintiff,

vs.

GREGORY ARNOLD,

Appellee-Defendant.

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No. 49A04-0610-CR-601

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APPEAL FROM THE MARION SUPERIOR COURT

The Honorable William Young, Judge

Cause No. 49G20-0302-FA-27962

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**July 31, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

The State of Indiana appeals from the denial of its motion to correct error following the granting of Gregory Arnold's motion to suppress. We dismiss the State's appeal as untimely.

## **Facts and Procedural History**

On February 19, 2003, following a traffic stop of a vehicle driven by Arnold, police seized a handgun from Arnold and marijuana and cocaine from the vehicle. Police searched Arnold and found keys to a second vehicle, from which they seized additional cocaine. On February 20, 2003, the State charged Arnold with class A felony dealing in cocaine, class C felony possession of cocaine, class C felony possession of cocaine and a firearm, and class A misdemeanor possession of marijuana.

Arnold filed a motion to suppress. On January 27, 2006, Commissioner Israel Cruz denied Arnold's motion to suppress. Arnold filed a petition for review by the presiding judge, William Young. On May 9, 2006, Judge Young granted Arnold's motion to suppress. That same day, according to the chronological case summary ("CCS"), the State announced its intention to file an interlocutory appeal.<sup>1</sup>

Instead of doing so, however, the State filed a motion to correct error on June 8, 2006.<sup>2</sup> The trial court made the following handwritten notation on the motion to correct error: "6/9/06 denied, copy to atty Hennessy [Arnold's counsel] & Brodeur [deputy

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<sup>1</sup> Indiana Code Section 35-38-4-2 provides that the State may appeal "[f]rom an order granting a motion to suppress evidence, if the ultimate effect of the order is to preclude further prosecution."

prosecutor] /s/ William Young[.]” There is no indication that Brodeur failed to receive a copy of Judge Young’s ruling.

The State filed its notice of appeal on July 11, 2006. The notice of appeal does not mention the motion to correct error and purports to “give notice of an appeal from the May 9, 2006 order” granting Arnold’s motion to suppress. Pursuant to an extension of time granted by this Court, the State filed its appellant’s brief and appendix on January 2, 2007. The CCS in the appendix incorrectly indicates that Judge Young denied the State’s motion to correct error on June 12, 2006. On February 28, 2007, pursuant to a motion filed by Arnold, Judge Young issued an order to amend the CCS to reflect that he had denied the State’s motion to correct error on June 9, 2006.

On March 1, 2007, Arnold filed a motion to dismiss the State’s appeal as untimely, claiming that the State filed its notice of appeal from the denial of its motion to correct error after the thirty-day deadline of Indiana Appellate Rule 9(A).<sup>3</sup> The State did not respond to Arnold’s motion to dismiss. On March 28, 2007, two of the three members of this Court’s motions panel voted to deny Arnold’s motion to dismiss. Two days later, Arnold filed his appellee’s brief and appendix. On April 25, 2007, the State filed a supplemental appendix. The State did not file a reply brief.

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<sup>2</sup> The motion to correct error does not appear in the State’s appendix. The State incorrectly claims that the motion was filed on June 9, 2006. Appellant’s Br. at 2. A CCS entry for June 9 says, “State on 06/08/06 files MOTION TO CORRECT ERRORS[.]” Appellant’s App. at 32.

<sup>3</sup> We presume, as does Arnold, that the State intended to appeal from the denial of its motion to correct error, rather than from the granting of Arnold’s motion to suppress, which occurred one month earlier.

## Discussion and Decision

Indiana Appellate Rule 9(A)(1) provides that “if any party files a timely motion to correct error, a Notice of Appeal must be filed within thirty (30) days after the court’s ruling on such motion, or thirty (30) days after the motion is deemed denied under Trial Rule 53.3, whichever occurs first.” Appellate Rule 9(A)(5) states, “Unless the Notice of Appeal is timely filed, the right to appeal *shall be forfeited* except as provided by” Post-Conviction Rule 2, which applies only to criminal defendants. (Emphasis added.)

Appellate Rule 25(B) states in pertinent part,

In computing any period of time allowed by these Rules, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a non-business day. If the last day is a non-business day, the period runs until the end of the next business day.

“For purposes of this rule, a non-business day shall mean a Saturday, a Sunday, a legal holiday as defined by state statute, or a day the Office of the Clerk is closed during regular business hours. A business day shall mean all other days.” Ind. Appellate Rule 25(A).

In his appellee’s brief, Arnold renews his argument that the State filed its notice of appeal from the denial of its motion to correct error after Appellate Rule 9(A)’s thirty-day deadline and that therefore the State’s appeal must be dismissed as untimely. “Even though the motions panel of this court has already ruled upon this issue, we may reconsider that ruling.” *State v. Moore*, 796 N.E.2d 764, 766 (Ind. Ct. App. 2003), *trans. denied* (2004).

Having reconsidered the matter, we must agree with Arnold. The State has never claimed that it was misled by the CCS regarding the date on which Judge Young actually

denied its motion to correct error, or that it did not receive actual notice of that date: June 9, 2006. The thirty-day deadline for appealing that denial fell on Sunday, July 9. Pursuant to Appellate Rule 25(B), the deadline was extended to Monday, July 10. Because the State did not file its notice of appeal until Tuesday, July 11, we must dismiss its appeal as untimely.

Dismissed.

BAKER, C. J., and FRIEDLANDER, J., concur.